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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written statement submitted by Human Rights Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 January 1999]

GE.99-10678 (E)

1. Human Rights Watch is concerned about the racial impact of felony disenfranchisement laws in the United States. These laws deny 1.4 million black Americans the right to vote. The laws denying them the franchise are unreasonable and racially discriminatory under international human rights law.

2. In most of the United States, conviction of a felony strips the offender of the right to vote while he or she is in prison, or on probation or parole. In addition, one quarter of the States disenfranchise ex-offenders who have served their sentences. Few of these ex-offenders have the knowledge, or financial or political resources needed to regain the vote, for example by securing an order from the State governor or a presidential pardon; they remain disenfranchised for life.

3. Criminal disenfranchisement in the United States is not imposed by order of a judge as part of a criminal sentence. It is a collateral consequence of conviction that occurs automatically and administratively. Conviction of any crime that is punishable with imprisonment is a basis for losing the right to vote. The crime need not be notably serious nor have any connection to electoral or political processes or the security of the State. Shoplifting or possession of a modest amount of marijuana suffice.

4. State disenfranchisement laws have a dramatically disproportionate racial impact. Black Americans constitute more than one third of the 3.9 million Americans who cannot vote because of felony convictions. Nationwide, 13 per cent of black Americans are disenfranchised - a rate of disenfranchisement that is seven times the national average. These national figures mask wide disparities among the States. Ten States disenfranchise more than one in five black men. In two States, 31 per cent of all black men are disenfranchised. If current trends continue, 3 in 10 black men nationwide will be disenfranchised. In States that disenfranchise ex-felons, Human Rights Watch estimates that 40 per cent of the next generation of black men is likely to be disenfranchised for life.

5. The right to vote is a fundamental cornerstone of democracy and is recognized as such by United States law. However, the United States Supreme Court has ruled that the nation's Constitution permits criminal disenfranchisement unless it has been racially motivated. In some States, disenfranchisement laws were, in fact, enacted with the express purpose of excluding as many blacks as possible from the vote. In most States, however, the racially disparate impact is not the intent but merely the effect of the laws. It reflects the grossly disproportionate impact on black Americans of criminal justice policies in the United States, including anti-drug activities that have heavily focused on poor inner-city neighbourhoods with predominantly black populations. Black men in the United States, for example, are imprisoned at a rate that is 8.5 times greater than that for white men.

6. Article 25 of the International Covenant on Civil and Political Rights (ICCPR), provides that every citizen has the right to vote and that right may not be subject to discrimination or to "unreasonable restrictions". The Human Rights Committee has affirmed in its General Comment 25 that article 25 "lies at the core of democratic government based on the consent of the people" and that restrictions on the right to vote should only be based on grounds that are "objective and reasonable". Acknowledging the existence of criminal

disenfranchisement laws, the Committee has stated that "[i]f conviction for an offence is the basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence".

7. The United States may have the world's most restrictive criminal disenfranchisement laws. Some countries condition disenfranchisement of prisoners on the seriousness of the crime or the length of their sentence, while other countries simply permit all prisoners to vote. We know of only one other country in addition to the United States in which a person convicted of any crime remains disenfranchised after release from prison. In at least one country, the law obliges prison authorities to encourage prisoners to assert their voting rights. A few countries restrict the vote for a short period after conclusion of the prison term, for example in the case of persons convicted of buying or selling votes or of corrupt practices.

8. There is little doubt that United States State laws denying the vote to all ex-convicts regardless of the nature of their crime or the severity of their sentences are unreasonable. In the United States an 18-year-old first-time offender convicted of writing a bad cheque who receives a non-prison sentence can lose the right to vote for life. Depriving citizens of a political right should only be undertaken for compelling reasons and only to the extent necessary to further those interests. But there are no such compelling interests being served. These disenfranchisement laws reflect an outdated view that voting is a privilege, not a right possessed by all. Ex-offenders have paid their debt to society; they are affected by the actions of government as any other citizen and should be able to participate in governmental decision-making. Moreover, denying ex-offenders the right to vote impedes rehabilitation and the effort to convert former felons into law-abiding and productive citizens.

9. The practice in the United States of taking the vote from convicted offenders while they are on probation, parole or in prison is also suspect. The vote is lost regardless of whether the crime they were convicted of is serious, and without participation by a judge. Given that incarcerated offenders suffer the grievous loss of liberty, it is difficult to discern a State's interest in inflicting even more punishment by depriving offenders of another basic right - that of suffrage.

10. The racially disproportionate impact of disenfranchisement laws in the United States is also inconsistent with the principles of non-discrimination contained in the International Covenant on Civil and Political Rights, article 25 of which specifically prohibits racial discrimination with regard to electoral rights, and in the International Convention on the Elimination of All Forms of Racial Discrimination, which requires States parties to guarantee, without distinction as to race, colour or national or ethnic origin, "[p]olitical rights, in particular the right to participate in elections - to vote and to stand for election - on the basis of universal and equal suffrage". United States criminal disenfranchisement laws appear to be precisely the kind of laws condemned by these two instruments: they unnecessarily and unjustifiably create significant racial disparities in the curtailment of an important right.

Caste violence in India

11. Caste-related violence continued to be a serious problem in India in 1998. In its investigation of this issue, Human Rights Watch concluded that despite promises to address longstanding concerns about violence and discrimination against low-caste "untouchable" Dalit groups, the Government made no progress in either investigating caste-related abuse or in implementing laws designed to curb it. Many of the incidents involved efforts by middle- and higher-caste groups to suppress Dalit movements demanding land reform or payment of minimum wages. Dalit women were singled out in attacks and were frequently raped. In Bihar, the Ranvir Sena, a private militia controlled by high-caste landlords, was responsible for murdering at least 58 people on 1 December 1997; to this day no militia members have been arrested.

12. Caste clashes in the State of Tamil Nadu in February 1998 involved the local police. On 26 February in Gundupatti, over 100 police, together with four truckloads of unidentified men, attacked Dalits and bonded labourers in Kookal Panchayat, a remote area of the Kodaikanal hills. According to a local human rights organization, women were kicked and beaten, property was looted and destroyed, and children and elderly persons were assaulted. The attack was apparently in retaliation for a decision made by villagers to boycott national elections.

13. In the Kurnool district in Andhra Pradesh as many as 30 low-caste villagers were killed in the early morning hours of 16 July 1998. The victims were hacked to death and their bodies were thrown into a house which was then set on fire. At least 100 other houses were burned to the ground. High-caste villagers were believed to be responsible for carrying out the massacre, in apparent retaliation for the murder of a high-caste community leader by members of the People's War Group (PWG), a Marxist organization that has advocated the use of violence to achieve land reform. Many Dalits in the area supported the PWG, and most of those killed belonged to Dalit communities. The local police did not appear on the scene for more than 10 hours after the massacre. Dalit villagers told local human rights investigators that many of their attackers appeared to have police protection.

14. Incidents such as these, and all acts of violence and discrimination against Dalits, are clearly outlawed by India's Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which the Government has failed to enforce. They are also in violation of India's obligations as a party to the International Covenant on Civil and Political Rights. The Committee on the Elimination of Racial Discrimination (CERD), when it last reviewed a report submitted by India on compliance with the Convention, raised serious concerns about the caste situation in India and in its concluding observations urged the Government to take specific measures aimed at ending caste-related abuses.

15. Human Rights Watch urges the Commission to call on the Government of India to take immediate steps to prevent and eliminate caste-based violence and bring current practices into compliance with national and international law.